



January 24, 2001

Mr. James T. Jeffrey, Jr.
Remington & Jeffrey, P.C.
1306 West Abram Street
Arlington, Texas 76013-1703

OR2001-0261

Dear Mr. Jeffrey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143660.

The City of Campbell (the "city"), which you represent, received a request for copies of city meeting minutes and tapes, bank statements, the 2000-2001 budget, and correspondence concerning lawsuits brought against the city by two specified individuals. You state that you have released information pertaining to meeting minutes, bank statements and the budget. However, you claim that the correspondence concerning lawsuits is excepted from disclosure under sections 552.101, 552.103, and 552.107(1) of the Government Code. We have considered the exceptions you claim and your arguments.

You inform this office that you are not furnishing us with the information that you are withholding from the requestor which you assert is protected by the attorney-client, attorney work product, and party communication privileges. You argue that providing us with your privileged communications would breach the Code of Professional Responsibility and that no provision of the Public Information Act (the "Act") can compel you to violate your duty to your client. However, section 552.301(e)(1) of the Government Code requires a *governmental body* that requests an attorney general decision to submit to this office a copy of the specific information requested or representative samples no later than the fifteenth business day after the date of receipt of the request. Gov't Code § 552.301(e)(1)(D). The submission of the information to this office under subchapter G of the Act is by the governmental body (i.e., the client) and not by the attorney for the governmental body. See Gov't Code §§ 552.3035 (prohibiting attorney general from disclosing information submitted under section 552.301(e)(1)(D)); TEX. DISCIPLINARY R. PROF'L CONDUCT 1.05(c)(4) (permitting release by attorney in order to comply with other law). Because you have not submitted a copy of the requested information, you have failed to request a decision pursuant to section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has long held that information made confidential by another source of law constitutes a compelling reason for withholding under section 552.302. *See* Open Records Decision No. 150 (1977). Because you have not submitted the information, we have no basis for finding any of it confidential. Thus, we have no choice but to order the information released per section 552.302. If you believe the information may not lawfully be released, you must challenge the ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

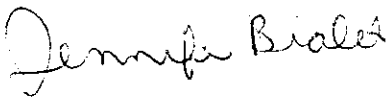
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 143660

cc: Ms. Debbie Byrd
4833 County Road 3111
Campbell, Texas 75422